

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
April 24, 2003 Session

IN THE MATTER OF THE ESTATE OF MARTHA L. LACEY, DECEASED

**A Direct Appeal from the Probate Court for Gibson County
No. 14757-P The Honorable George R. Ellis, Judge**

No. W2002-01230-COA-R3-CV - Filed July 17, 2003

Claimant, State of Tennessee, filed a claim against the estate of the deceased pursuant to T.C.A. § 30-2-306(c), and the Co-Administrators of estate excepted to the claim. The chancery/probate court denied the claim as time barred. Claimant appeals. We reverse.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery/Probate Court is
Reversed**

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALANE HIGHERS, J. and HOLLY KIRBY LILLARD, J., joined.

Paul G. Summers, Attorney General and Reporter, L. Vincent Williams, Special Deputy Attorney General, For Appellant, Tennessee State Veterans Homes Board

Harold E. Dorsey, Humboldt, For Appellee, Estate of Martha L. Lacey, Deceased

OPINION

Claimant, Tennessee State Veterans Homes Board ("SVHB"), was created pursuant to T.C.A. § 58-7-102 (2002), which provides in pertinent part:

(a)(1) There is hereby created a body, politic and corporate, to be known as the "Tennessee state veterans' homes board."

(2) the board, a political subdivision and instrumentality of the state, shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and shall be deemed to be serving a public purpose and improving and otherwise promoting their health, welfare, and prosperity.

The SVHB operates Tennessee State Veterans Homes and provides nursing home care for veterans and certain members of the veterans' families. Martha L. Lacey was a former resident of

the facility but left the facility before her death, although continuing to maintain certain rights and space at the facility until May 19, 1999. Ms. Lacey died on May 25, 1999. During her residency at the facility, Ms. Lacey incurred a debt of \$12,145.23 to the State, and the co-administrators concede this is Ms. Lacey's valid debt. A "Statement Of The Proceedings" and "Statement Of The Evidence" was filed, agreed to by the parties as a stipulation, and states in pertinent part:

1. On February 24, 2000, Mr. George C. Donald and Mrs. Lena B. Reid filed a Petition for Appointment as Co-Administrators of the estate of Mrs. Martha L. Lacey. Mr. Donald and Mrs. Reid averred in paragraph 3 of the Petition that they were "next of kin and the residual beneficiaries of the will. . . ."

2. On March 27, 2000, the Co-Administrators filed an Amended Petition for Appointment as Co-Administrators. The only perceptible changes from the initial Petition are the addition of three (3) additional beneficiaries and the allegation in paragraph 6, that the Co-Administrators, Mr. Donald and Mrs. Reid are in fact beneficiaries of the estate. Mr. Donald and Mrs. Reid were subsequently appointed Co-Administrators.

3. On May 4, 2000, counsel for the Co-Administrators submitted a publication fee to the Clerk and Master. The Clerk and Master subsequently transmitted a request for publication of a "Notice to Creditors" to The Chronicle, an area newspaper. The Notice stated in pertinent part:

NOTICE TO CREDITORS

Estate of Martha L. Lacey

Notice is hereby given that on the 4th day of May, 2000, Letters ADMINISTRATION WITH WILL ANNEXED in respect to the Estate of Martha L. Lacey, deceased, were issued to the undersigned by the Probate Court of GIBSON County, Tennessee.

All persons, resident and non-resident, having claims matured or un-matured, against the estate are required to file same with Clerk of the above named Court within four (4) months from the date of the first publication of this notice, otherwise their claims will be forever barred.

4. After publication, the publisher of The Chronicle submitted an Affidavit of Publication to the Court and appended copies of the published notices. The affidavit of Publication states that the first notice was published on May 17, 2000.

5. On July 10, 2000, Mr. Donaldson, as Co-Administrator, mailed a notice purporting to be an actual notice to the Tennessee State Veterans Homes Board, one of Mrs. Lacey's known creditors. This notice stated in pertinent part:

Actual Notice to Creditors

Notice is hereby given that the above-captioned estate is being administered through the Chancery Court - Probate Division of Gibson County, at Trenton, and the undersigned is the duly appointed, qualified and acting Personal Representative thereof.

Pursuant to T.C.A. 30-2-306 (e), all parties having any Claims, matured, or un-matured, against said estate are required to file the same with the clerk of the herein named court within four (4) months from the 17th day of May, 2000, (first day of publication in newspaper) otherwise such claims will be forever barred.

This Notice will serve as your actual notification for the Filing of claims as aforesaid.

6. On September 15, 2000, the Tennessee State veterans Homes Board (SVHB) filed a claim of \$12,145.23.

7. On October 4, 2000, the Personal Representative filed an exception to the SVHB's claim on the grounds that:

... such debt is not legally enforceable by virtue of but not limited to the fact that there is a lack of consideration, claimant has no evidence of the indebtedness in writing and the claim is barred by the statute of limitations.

8. On May 8, 2001, the Court held an evidentiary hearing on the Personal Representative's exception to the SVHB's claim. The Attorney General & Reporter appeared on behalf of SVHB.

9. The Co-Administrators contended that the claim was barred by Tenn. Code Ann. § 30-2-307 because it was not filed within one year of the death of Mrs. Lacey. The Tennessee State Veterans Homes Board contended that the claim was timely within the notice period and that the State was not barred by the statute. The Court directed the parties to file briefs and continued the hearing to June 12, 2001.

10. On June 8, 2001, both parties filed briefs in accordance with the Court's directive.

11. On June 12, 2001, the Court heard the arguments of the parties and considered legislative history submitted by the SVHB relating to Tenn. Code Ann. § 30-2-310 (b). Tenn. Code Ann. § 30-2-310(b) is an amendment to the statute of limitationsthe Court ruled that the Tennessee State Veterans Homes Board's claim should be barred.

12. On July 20, 2001, the Court held a status conference. The Court sought an explanation of the reasons why it had not received a draft Order. The Tennessee State Veterans Homes Board explained that it advised the Co-Administrators that it would not agree to the draft because it appeared to be presented as an agreed order, although it fairly summarized the Court's decision. The Petitioner contends that the Court also noted that the Motion for New Trial had been filed by the Tennessee State Veterans Homes Board, but deferred argument on the Motion until after the order was entered. The Respondent remembers no such statement regarding a motion for new trial.

13. The Court set September 11, 2001 as the date for the hearing on the Motion for New Trial or to Alter and Amend Judgment and instructed the parties to submit any additional briefs or information they wished to have the Court consider prior to the hearing date.

14. On September 11, 2002, the Petitioner's Motion for New Trial was not in the file. However, the Court ruled that the Petitioner did make a diligent effort to make a timely filing. The Respondent disagrees that a diligent effort was made to make a timely filing.

STATEMENT OF THE EVIDENCE

1. During the evidentiary phase of the proceedings on May 8, 2001, the Tennessee State Veterans Homes Board called Ms. Linda Cooper to testify as a witness. Ms. Cooper, a Manager of the SVHB's Humboldt facility, testified that the facility is effectively a nursing

home or residence for veterans and certain members of their families. She further testified that Mrs. Lacey was a former resident of the facility, but left it before her death. After Mrs. Lacey left the facility and before her death she continued to maintain certain rights in space at the facility until May 19, 1999. Ms. Cooper further testified that Mrs. Lacey incurred the \$12,145.23 debt stated in the SVHB's claim. Ms. Cooper also testified that the Attorney General's first notice of the proceedings was just prior to the evidentiary hearing.

2. Ms. Cooper also identified documents substantiating the SVHB's claim which were introduced and admitted in evidence as Exhibit 1. Ms. Cooper further testified that the SVHB had filed its claim on or before September 15, 2000.

3. After Ms. Cooper's testimony, counsel for the co-Administrators admitted the validity of the SVHB's debt.

4. The Co-Administrators called Mr. George Donald as a witness. Mr. Donald testified that Mrs. Lacey died on May 25, 1999. He also identified a death certificate which stated that Mrs. Lacey died on May 25, 1999. The death certificate was introduced into evidence as Exhibit 2. The Co-Administrators did not call any other witnesses.

By order filed July 20, 2001, the court held that SVHB's claim is barred.

Due to some type of mixup, not entirely clear from the record, a motion to alter or amend or for a new trial ostensibly prepared and forwarded to the clerk of the court was not shown as filed within 30 days of the entry of the order of June 12, 2001. From the colloquy between the court and counsel for the parties and from the statements in the brief, it appears that the court suggested that SVHB should file a motion for an order of correction *nunc pro tunc* pursuant to Tenn. R. Civ. P. 60, in order to properly include a motion for a new trial or to alter or amend as a timely part of the record. Subsequently, the trial court ruled that the appellant's motion would be considered timely filed but then denied the motion. SVHB has appealed, and it appears it presents as the issue for review whether the trial court erred in ruling that its claim against the estate is time barred. The co-administrators of the estate have listed three issues for review, as stated in their brief:

1. Do the limitations outlined in Tennessee Code Annotated 30-2-306-310 allow claims to be filed more than twelve months after the decedent's date of death?
2. Do the limitations in Tennessee Code Annotated 30-2-310 specifically include the state and are they effective in this case?

3. Is the untimely filing of the Motion for New Trial or to Alter or Amend Fatal to all Post Trial Relief?

It appears that the first two issues presented by the appellees are encompassed within the issue presented by appellant and will be considered in conjunction therewith. We will first consider the third issue presented by the appellees.

It appears from the record and from statements in the brief that, although SVHB's attorney prepared and sent for filing to the clerk of the court the motion in question, for some unknown reason the motion did not appear in the record, but a copy was received by the appellees. Appellees had filed a motion to dismiss the appellant's motion for a new trial, etc., because it was untimely. Under these circumstances, we perceive the Rule 60 motion filed by the appellant to be in substance a motion to set aside the order of July 20, 2001 pursuant to the provisions of Tenn.R.Civ.P. 60.02 and to re-enter the judgment, thus allowing a timely filing of the appellant's motion. We will consider substance over form, and hold that the trial court correctly found that relief was warranted. Although the procedure used was not entirely correct, the evidence does not preponderate against the trial court's finding that relief should be granted and the manner in which it was granted reaches the right result. Accordingly, we find no merit in this issue.

We will now consider the primary issue: whether the SVHB claim was timely filed. Disregarding for a moment co-administrators' statute of limitations issue, we must first determine whether SVHB properly filed its claim against decedent's estate. T.C.A. § 30-2-306 (2001) provides in pertinent part:

(a) Except as provided in subsection (f), it is the duty of the clerk of the court in which an estate is being administered, within thirty (30) days after the issuance of letters testamentary or of administration, to give in the name of the personal representative of such estate public notice of such personal representative's qualification as such by two (2) consecutive weekly notices published in some newspaper of the county in which letters testamentary or of administration are granted, or, if no newspaper is published in such county, by written notices posted in three (3) public places in the county, one (1) of which shall be posted at the usual place for posting notices at the courthouse.

* * *

(c) The notice shall be substantially in the following form:

NOTICE TO CREDITORS

Estate of _____ (name of deceased)

Notice is hereby given that on the _____ day of _____, 20____ letters testamentary (or of administration as the case may be) in respect of the estate of _____ (name of deceased) were issued to the undersigned by the _____ court of _____ County, Tennessee. All persons, resident and nonresident, having claims, matured or unmatured, against the estate are required to file the same with the clerk of the above named court within four (4) months from the date of the first publication (or of the posting, as the case may be) of this notice, otherwise their claims will be forever barred. This _____ day of _____, 20____.

(Signed) _____
Administrator (or Executor)

Estate of _____
(Name of deceased)

Pursuant to the above statute, notice was first published on May 17, 2000, and SVHB was required to file its claim "within four (4) months from the date of the first publication" of notice to creditors by the personal representative of the state. The evidence is undisputed that SVHB complied with the limitations period set forth in this section. Claimant's compliance with this provision, however, does not end discussion of this issue.

Section 30-2-306(c) must be read in conjunction with T.C.A. § 30-2-307(a)(1) (2001), which states:

(a)(1) All claims against the estate arising from a debt of the decedent shall be barred unless filed within the period prescribed in the notice published or posted in accordance with § 30-2-306(c). However:

(A) If a creditor receives actual notice less than sixty (60) days before the expiration of the period prescribed in § 30-2-306(c) or after the expiration of the period prescribed in § 30-2-306(c) and more than sixty (60) days before the date which is twelve (12) months from the decedent's date of death, such creditor's claim shall be barred unless filed within sixty (60) days from the date of receipt of actual notice; or

(B) If a creditor receives actual notice less than sixty (60) days before the date which is twelve (12) months from the decedent's date of death or receives no

notice, such creditor's claim shall be barred unless filed within twelve (12) months from the decedent's date of death.

To properly analyze whether the subsections quoted above are applicable to the particular facts of this case, we find it helpful to lay out a brief outline of the pertinent dates.

Date of Death	5/25/99
Date of First Publication of Notice	5/17/00
Twelve Months After Death	5/25/00
Date of Alleged Actual Notice	7/10/00
Claim Filed	9/15/00
Section 306 Four Month Filing Period Expires	9/17/00

From the above timeline, it is apparent that neither of the subsections contained within T.C.A. § 30-2-307(a)(1) apply in this case. We therefore find that SVHB properly filed its claim in compliance with the limitations period prescribed in T.C.A. § 30-2-306(c).

The Co-Administrators assert that, notwithstanding the filing of the claim within the period prescribed in the publication's Notice to Creditors, the claim was filed after the period of limitations provided for in T.C.A. § 30-2-310 (2001). At the time the claim was filed, § 36-2-310 provided:

All claims and demands not filed with the probate court clerk, as required by the provisions of § § 30-2-306 – 30-2-309, or, if later, in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.

The statute was amended by Chapter 970, Public Acts of 2000, which provides as follows:

AN ACT to amend Tennessee Code Annotated, Section 30-2-310, relative to period of time within which claims must be filed by the state against estates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 30-2-310, is amended by designating the existing language as subsection (a) and by adding the following language to be designated as subsection (b):

(b) Notwithstanding the provisions of subsection (a), all claims and demands not filed by the State of Tennessee with the probate court

clerk, as required by the provisions of § § 30-2-306 - 30-2-309, or , if later, in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred. This statute of limitations shall not apply to claims for state taxes. Such claims shall continue to be governed by Tennessee Code Annotated, Section 67-1-1501.

SECTION 2. This act shall take effect on January 1, 2001, and shall apply to all estates which have not been closed on January 1, 2001 and to all estates which come into existence on or after January 1, 2001.

Thus, by virtue of the amendment effective January 1, 2001, the estate was included in the statute for the prescribed limitations periods.

As previously noted, the State filed its claim within the time provided for in T.C.A. § 30-2-306(b) and prior to January 1, 2001. Thus, at the time the State filed its claim, the one-year limitation period was not yet applicable and, therefore, the State was not governed by the January 1, 2001 amendment. In *State Dep't of Public Welfare v. O'Brien*, 292 S.W.2d 733 (Tenn. 1956), the State Department of Public Welfare appealed the denial of its claim against the estate to recover old age assistance paid to the deceased. The claim was denied, because it was not filed within the then limitation period of nine months established by the predecessor to T.C.A § 30-2-306. *Id.* The sole question on appeal was whether the statute of limitation applies to the State because it was not named in the statute providing the limitation. *Id.* The Supreme Court, in holding that the State's claim was not barred, stated:

One of such rights is to have its claims exempt from statutes of limitations, except when it is expressly embraced within the limitations provided by the statute. Hence, under the aforesaid ruling in *State v. Smith*, the claim of the sovereign against the decedent's estate for moneys furnished such decedent under the Old Age Assistance Law is not barred by that provision of the administration of estates statute barring claims which were not filed within the time therein specified, Section 30-513, T.C.A.

Further, this Court is unable to find any distinction in quality between the claim owed the State for payments in its sovereign capacity from its taxes to aid indigent persons, and the claim of the State for taxes and assessments owed it. If, therefore, the provision in the administration of estate statute barring claims which have not been filed within the time provided by that statute does not apply to the claim of the sovereign for taxes owed it because of the rule stated in *Commerce Union Bank v. Gillespie*, *supra*, then, for the same

reason, that statute does not bar the claim of the sovereign against the estate of the decedent for payments made such decedent under and by virtue of the Old Age Assistance Law.

The holding in (1) *Commerce Union Bank v. Gillespie*, supra, and (2) *State v. Smith*, supra, each rules the case at bar, and requires a holding that this claim of the State for moneys paid under the Old Age Assistance Law to decedent Eatherly is not barred because not filed within the period limited by the statute of limitations in question, it not appearing that settlement of the estate and disbursement of its funds had been made prior to the time the State did file its claim.

Id. at 734.

This Court is unable to find any distinction in quality between the claim owed the State for old age assistance payments and for the claim of the State for assistance rendered to the family of a veteran. Thus, we conclude that the statute of limitations, as it existed at the time the State's claim was filed, did not apply to the State.

Although the 2000 amendment to the statute applies to all estates "which have not been closed on January 1, 2001," it does not operate retroactively to void a claim made valid prior to the effective date of the statute. A statute of limitation "may not be given retrospective application so as to bar an accrued right of action, but may bar a cause of action which has not yet accrued or vested." *Jones v. Morristown-Hamblen Hosp. Ass'n, Inc.*, 595 S.W.2d 816, 820 (Tenn. Ct. App. 1979) (citation omitted). SVHB filed its claim against decedent's estate on September 15, 2000, two days prior to the expiration of the filing period specified in T.C.A. § 30-2-306(c). On this basis, we conclude that claimant had an accrued right and thus there should be no retrospective application of the limitations period to bar the claim. Accordingly, the State's claim was timely filed.

Moreover, we believe the decision of this Court in *Estate of Divinny v. Wheeler Bonding Co., Inc.*, No. M1999-00678-COA-R3-CV, 2000 WL 337584 (Tenn. Ct. App. Mar. 31, 2000) (permission to appeal denied Dec. 4, 2000), fortifies our position as to the timeliness of the State's claim.

In *Divinny*, decedent died intestate on March 10, 1997. *Id.* at *1. On August 10, 1998, claimant filed a complaint to admit Mr. Divinny's estate for probate as no one else had come forward. *Id.* In January 1999, a personal representative was appointed for the estate. *Id.* Notice was completed to all creditors by mid-month, and claimant filed its claim against the estate on January 29, 1999, nearly two years after decedent's passing. *Id.* The personal representative for the estate

filed an exception to this claim. Claimant filed an amended claim in May 1999.¹ *Id.* At a hearing before the trial court in May 1999, WBC's claim was denied, the trial court providing the following reasons for its denial of the claim:

[T]he claim was filed more than one year following the death of Jackson Brown Divinny and filing for administration in Chancery under T.C.A. § 30-1-301 is not an alternative proceeding for escaping the one-year statute prohibiting creditors from filing claims more than one year following the death of a debtor.

Id.

On appeal, claimant presented for review the sole issue of whether “a claim filed by a creditor against an estate within the period prescribed in a published notice in accordance with Tennessee Code Annotated § 30-2-306(c) is barred by Tennessee Code Annotated §§ 30-2-307 or 30-2-310, when probate of the estate was not sought until more than one year after the decedent's death.” *Id.* Claimant's position on appeal was aptly summarized as follows:

... WBC maintains that it filed its claim against Mr. Divinny's estate within six months of the published notice under Tennessee Code Annotated § 30-2-306(c), and thus, its claim is timely filed.

Id. at *2.

In reversing the judgment of the trial court, the Tennessee Court of Appeals, Eastern Section, stated:

From our reading of the relevant statutes, we are of the opinion that WBC followed the statutory requirements for filing its claim against Mr. Divinny's estate. WBC sought to have a personal representative appointed to administer Mr. Divinny's estate, since no one had come forward to do so. Once that personal representative published a notice to creditors, WBC filed its claim and then its amended claim within the prescribed six-month period of time. As WBC notes in its brief, the emphasis in both Tennessee Code Annotated §§ 30-2-307 and 30-2-310 is on requiring creditors to file their claims against an estate within a six-month period of time.

Id. at *3.

¹ In a footnote, the court recognized that WBC's claim and amended claim were both filed within the six-month period then prescribed by T.C.A. § 30-2-306(c). *Id.* at *1, n. 2. “The period for filing a claim was changed from six months to four months by a 1997 amendment of this statute. The amendment became effective on January 1, 1998 and applies “to all estates of decedents dying on or after January 1, 1998....” *Id.* (citation omitted).

The factual circumstances and legal analysis in *Divinny* are sufficiently similar to those in the case at bar to justify our reliance thereon.

Accordingly, the judgment of the trial court denying the State's claim is reversed, and the case is remanded for such further proceedings as may be necessary. Costs of the appeal are assessed to the Estate of Martha L. Lacey.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.